

Only the Army Corps of Engineers can decide if further NEPA review will be required once the BDCP or any of its components are provided to them for evaluation under the Rivers and Harbors and Clean Water Acts. It is not possible to predict, at this time, whether the BDCP EOR/EIS will contain all of the information required by the regulations used by the Corps to make final permit decisions. However, there may be an opportunity for the Corps to coordinate with BOR and other appropriate parties to establish a coordination protocol to integrate efforts to the extent practicable.

Timeline:

A. MOU is signed

1. Applicant(s) for Corps permits are identified
2. Project seeking Corps permits is defined by Applicant
3. Basic and Overall Purpose Statement developed by Corps
4. Range of Alternatives developed by Corps
5. Analysis of impacts is completed by Applicant and determined adequate by Corps
6. Preliminary LEDPA is determined by Corps
7. Draft Mitigation Plan is submitted by Applicant and determined adequate by Corps
8. 65% engineering/design completed by Applicant and determined adequate by Corps
9. Applications to Corps submitted by Applicant
10. All information and analysis developed in A 1-9 is incorporated in the EIS exactly as instructed by the Corps

B. Public Draft EIS and Public Notice and transmittal of package to HQUSACE for 408 Review

1. Applicants respond to comments
2. Final mitigation plan is submitted by Applicant and approved by Corps
3. 100% engineering/design completed by Applicant and determined adequate by Corps

C. Final EIS

1. Corps Permits review completed; permit decisions made and ROD signed.

Two roles for Agencies in the BDCP EIS

	Level of Detail	Develops the Proposed Actions (Applicant)	Makes a Decision using the EIS	Oversight Powers	Consulting and/or Cooperating Role
For Approval of HCP	Programmatic	1) DWR	1) USFWS 2) NMFS 3) Reclamation	1) USEPA (NEPA)	1) USACE
For Approval of Corps Permits	Project Specific	1) DWR 2) Reclamation	1) USACE	1) USEPA (404)	1) USFWS 2) NMFS

Corps must have suitable range of alternatives analyzed, the impacts of just the parts of the BDCP seeking a permit analyzed separate from the whole BDCP, and the impacts have to be analyzed to Corps satisfaction, etc, in order to get through the permitting process, regardless of NEPA integration decisions. For all cases below, assumption is that all information and analysis required by the Corps has been developed and provided to the Corps.

Possible NEPA/Corps Permitting integration scenarios:

A. Corps Standard Procedure

1. Corps works directly with consultant preparing EIS.
2. Consultant follows all Corps instructions and does not need approval of the Applicant to do so.
3. All of the analysis and information required by the Corps for our permit decisions is in the EIS, exactly as specified by the Corps without modification or commentary by the Applicants or other agencies.
4. Corps is able to use EIS for permitting decisions.

B. BDCP Process prior to 4/4/2011:

1. Corps not allowed to see the EIS or meet with those who are.
2. Corps instructions on EIS preparation are not implemented unless approved by the Applicant. Each and every change is a major struggle.
3. All of the analysis and information required by the Corps for our permit decisions is in the EIS, but not exactly as specified by the Corps and/or subject to modification or commentary by the Applicants or other agencies.
4. Corps will have to do a supplement to the EIS following the Corps Standard Procedure at Applicant expense.

C. Process proposed by Reclamation 4/4/2011:

1. Corps not allowed to see the EIS or meet with those who are.
2. Corps instructions on EIS preparation are not implemented unless approved by the Applicant. Each and every change is a major struggle.
3. Some, if not most, of the analysis and information required by the Corps for our permit decisions is not in the EIS, and what is in is not exactly as specified by the Corps and subject to modification or commentary by the Applicants or other agencies.
4. Corps will have to do a separate EIS following the Corps Standard Procedure at Applicant expense.

Evaluation Factors

The decision whether to grant or deny a permit is based on a public interest review of the probable impact of the proposed activity and its intended use. Benefits and detriments are balanced by considering effects on items such as:

- conservation
- economics
- aesthetics
- general environmental concerns
- wetlands
- cultural values
- flood hazards
- floodplain values
- food and fiber production
- navigation
- shore erosion and accretion
- recreation
- water supply and conservation
- water quality
- energy needs
- safety
- needs and welfare of the people
- considerations of private ownership

The following general criteria will be considered in the evaluation of every application:

- the relative extent of the public and private need for the proposed activity;
- the practicability of using reasonable alternative locations and methods to accomplish the objective of the proposed activity; and
- the extent and permanence of the beneficial and/or detrimental effects which the proposed activity is likely to have on the public and private uses to which the area is suited.